

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ROSARIO GUZZI
Petitioner,

v.

MICHAEL THOMPSON
Respondent.

Civil Action No. 05-10300-RWZ

**RESPONDENT'S MOTION TO DISMISS PETITION
FOR WRIT OF HABEAS CORPUS AS
TIME-BARRED AND UNEXHAUSTED**

Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, the respondent respectfully submits this motion to dismiss the petition for a writ of habeas corpus filed by the petitioner, Rosario Guzzi. The petition must be dismissed as time-barred under 28 U.S.C. § 2244(d), the statute of limitations for federal habeas corpus petitions. Because his convictions for two counts of violation a restraining order became final after a jury trial in Middlesex Superior Court on September 10, 1997, and his conviction for two counts of intimidation of a witness and four counts of violation of a restraining order became final on September 11, 1997, the petitioner had to file his federal habeas petition within a one-year limitations period that expired in October, 1998. This petition was not filed until February 15, 2005, however, over six years after the limitations period had lapsed. Accordingly, the petition must be dismissed as time-barred.

Furthermore, even assuming the it was timely filed, the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 should be dismissed on the ground that the petition contains exhausted and unexhausted claims. *See Rose v. Lundy*, 455 U. S. 509, 518-519 (1982). In

support of his motion, the respondent relies on the accompanying memorandum of law and exhibits.

WHEREFORE, the respondent respectfully requests that the Court dismiss this habeas petition with prejudice on the ground that it is time-barred.

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

/s/ Eva M. Badway
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Dated: May 20, 2005

CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2005, I caused a copy of the above Motion to Dismiss to be served by first-class mail, postage prepaid, upon Rosario Guzzi, Jr., *pro se*, MCI-Shirley, Box 1218, Shirley, Massachusetts 01464.

/s/Eva M. Badway
Eva M. Badway